

Quid Novi

VOL. IV NO. 8

McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITY MCGILL

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Ian Fraser

Stephen, Larry & Loving this Planet

How much has the Charter changed the basic political processes of this country? Does an opponent of Cruise missile testing now have the option of compelling the government to meet a rational argument in court as well as the more traditional options of marching in the streets, lobbying one's representatives, and saving up grudges for the next election?

This question is due to be answered with respect to one issue by the Federal Court of Appeal, and that issue was explored for us a week ago in the Moot Court. Lawrence Greenspon, counsel to a coalition headed by Operation Dismantle, argued that opponents of Cruise missile testing did have the legal option, as the Cruise testing is a matter coming under Charter section 7 "life...and the security of the person". Prof. Steven Scott argued that they did

not, as Cruise testing is a matter of defence policy coming within the discretion of the Crown.

Greenspon spoke first, beginning with a brief history of the litigation in the Federal Court Trial Division. After the Federal Cabinet's announcement that the tests would proceed, he applied for an injunction against the cabinet to Mr. Justice Cattanach. The government responded with a motion to dismiss, claiming there was no stated cause of action. That motion was dismissed and appealed. On Oct. 11-12 Greenspon, with Professor Irwin Cotler, argued the appeal before a five-judge Federal Court of Appeal. Judgement was reserved.

Introduction completed, Greenspon launched into his argument, the essential point of which was that the Cruise missile is not just another development in arms technology. It is different primarily because one Cruise missile is about as long as two Moot Court tables set end to end. Without an onsite secret agent, its presence simply cannot be detected. This is significant because no arms agreement involving the Cruise can be verified. That is where s.7 comes in; regardless of what effect the Cruise has on the balance of power, the Cruise as an object of arms agreements will undermine those agree-

ments. And without viable arms agreements, again regardless of who is leading the arms race, the security of the Charter's "anyone" in Canada is threatened.

As a secondary argument, Greenspon included an allegation that the testing itself poses a hazard to the physical security of the Albertans in its vicinity.

Cont'd on p. 3

Cruisin' for a bruisin'

Pearl Eliadis

Last Wednesday, the McGill Law Group on Nuclear Disarmament, Forum National and the McGill Study Group on Peace and Disarmament sponsored a debate on cruise missile testing between Mr. William Epstein and Mr. Robert Howse.

Speaking to an audience of 85 students, Mr. Epstein opened the debate. His considerable experience includes a former directorship of the Disarmament Division

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Quotes of the Week

Prof. Morissette: "You will now understand why it is difficult for a man of my intelligence to teach Judicial Law & Evidence. Even I find it difficult to put up with."

Prof. Baker: "What I say about anything is totally irrelevant."

Not A Love Story

Forum National presents the film "Not A Love Story". It will be shown Thursday, October 27 at 3:00 p.m. in the Moot Court. All welcome.

Forum National Conference

Pornography and Censorship

Pornography and Censorship: Pre and post Charter

Lynn King, (Lawyer, Toronto, Ontario)
10:10 to 11:00 a.m.

Pornography, Censorship and the Criminal Code

Rick Mosely, (Federal Department of Justice)
11:10 a.m. to 12:00 p.m.

Pornography and Feminism

Marie-Hélène Boyle, (Vice President (East) Canadian Advisory Council on the Status of Women)
12:10 to 1:00 p.m.

Civil Liberties and Censorship

Ken Swan, (Chairman, Canadian Civil Liberties Association)
2:10 to 3:00 p.m.

Communication/Broadcasting Policy

Stewart Robinson, (Lawyer, specializing in communications)
3:10 to 4:00 p.m.

Panel Discussion: Government Responses to Pornography and Censorship

All Speakers
4:10 to 5:00 p.m.

Friday, October 28, 1983
10:00 a.m. to 5:00 p.m.
Faculty of Law, McGill University
3644 Peel Street
Moot Court Room

For further information:
Dan Bilak: 286-0816 or
Law Students' Association
Office: 392-5121

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All others: \$2.00

Call for Applications to Careers Committee of the Law Students Association

Background

Applications are hereby called for volunteers to work on the LSA Careers Committee, which has been created by LSA Council to replace the now defunct Job Bank and to provide additional services.

In contrast with the former Job Bank, members of the Careers Committee will be appointed and subject to removal by LSA Council, to ensure that the Committee's duties are fulfilled and that the funds made available to it are managed effectively.

Duties

The LSA Careers Committee shall provide information on career opportunities for law students. It shall maintain an up-to-date file for public use on law firms and other potential employers, as well as information concerning the requirements of the various provincial bars.

The Committee shall also organize public information sessions concerning the following: handling a job interview; preparing a curriculum vitae; non "mainline" careers in areas such as government, community organizations, journalism, teaching, being a notary, etc.

In addition, the Careers Committee shall organize a central drop-off/pick-up service so that students may have their covering letters and curriculum vitae typed at reasonable rates.

How to Apply

Persons interested in working on the LSA Careers Committee may obtain an application form at the SAO.

Completed application forms should be returned to the SAO and left in the "C" mailbox ("C" for "Committee", get it?) by Thursday, November 3, at 1:00 p.m.

Prospective candidates will be interviewed by LSA Council at its meeting to be held on Thursday, November 3, at 7:00 p.m. in Room 202.

Note The above description of duties was drafted by the ad hoc Committee of LSA Council on the Creation of a Faculty Placement Officer and is subject to approval by LSA Council.

Announcements

Course Evaluation November 7 to 11

Once again we will be asking for your cooperation in completing the Course Evaluation Questionnaire, as well as the Comment Sheet. Your constructive criticism, suggestions and comments are always appreciated.

Transcript Verification

Commencing Monday, October 24 until Friday, November 4, all students are urged to verify their transcripts at the S.A.O. This is your opportunity to ensure that your transcript is correct and up to date.

Please see posted notices for details.

Planet

Cont'd from p. 1

He then went on to address what he considered to be the four arguments against him. First, "the NATO con" that testing the Cruise is merely part of Canada's commitment to NATO. Refusal to test might be censured with a removal from the NATO alliance. Not so, says Greenspon: it was the United States that requested the tests having been turned down by two other NATO countries. Both remain members in good standing. Second, Crown prerogative includes the right to determine matters of defence like the testing of weapons systems. Defence against what? Given Greenspon's premises, the Cruise itself should be characterized as a threat; whatever "defence" Crown prerogative covers; it is not an appropriate power to invoke here.

Finally, there are the two perennial arguments that the matter is political, not legal. However, Canadian constitutional law lacks a developed "political questions" doctrine à l'américaine, and therefore, this dichotomy is too vague to be a controlling factor, according to Greenspon. Further, granting this injunction would open those terrible "floodgates". Better a few too many court cases than an executive making this kind of momentous decision free of any review, Greenspon says. He adds that this action was not taken by some cranky minority (Gallup had reported popular opinion in Canada was opposed to tests at the time the decision was taken), and that obvious alternative avenues were unavailable (there had been no Royal Commission, nor debates in the House of Commons).

Greenspon closed his speech with the thought that he felt fortunate to have

learned about this issue. He looks forward to the opportunity to share this enlightenment with a court, if and when the case ever gets to be heard on the merits.

That formed a suitable enough preface to Steven Scott's own introduction: this is not a debate on the Cruise; it is about the Constitution of Canada. And "shrimps will learn to whistle" before that Constitution will bend enough to allow success in Operation Dismantle's action.

Any threat to the security of Canadians is not posed by the action of our government, the respondent in this action. The threat arises from actions of foreign powers.

In any event, the matter has essentially been litigated already. The Crown's prerogative power over defence matters is continued from common law by s.9 of Charter and s.129 of the Constitution Act, Scott said, and that the extent of that prerogative of discretion was settled as recently as the mid-60's in Britain. Anti-nuke activists occupied an RAF base, preventing airplanes from taking off. At trial, their counsel attempted to cross-examine witnesses for the prosecution to show that impeding the use of nuclear weapons was in fact not "prejudicial to state interests" (an element of the offence). The attempt was blocked. According to the British court any such military judgement fell within the exclusive discretion of the Crown.

However, Scott added, one has to concede the value of Greenspon's action to his clients, regardless of the legal outcome. It provides millions of dollars of free publicity.

Greenspon made two sub-

stantive responses to Scott. Chandler, the RAF case, is distinguishable; it was a criminal prosecution on what amounted to a strict liability charge. For our purposes, another British case was more relevant Laker Airways, in which the court held that the Crown must answer for a use of prerogative powers which violated any subjects' rights, even contractual ones.

The other response was at a more basic level. The real point to all this is that the government does have an escape clause in the non obstante provision of the Charter; it should not be able to avoid the Charter constraints without facing either Parliament under s.33 or the courts under s.52.

Scott agreed. The rule of law must indeed prevail. However, the "law" was not what Greenspon imagined it to be.

At this point, Todd Sloan, chairing the debate, opened the floor to questions from the audience. The first two questions, from the non-law half of the audience, attacked both positions. A political science student asked Greenspon what his chances would be in Russia. Greenspon replied, "the pits", and that was a good reason to hope things would be different here. Another person asked Scott what use the Charter was if Canadians could not succeed in this action. Don't be so shocked, admonished Scott; you can't go to court over the Tax Act either. Other questions focused Greenspon's position on the extent of Crown discretion. Certainly it covers the declaration of war, he said, but these tests are not being undertaken in conditions remotely approaching wartime emergency.

Phyllis MacRae put the
Cont'd on p. 4

Quid Novi

Quid Novi is published weekly by the students of McGill Faculty of Law. Weekly meetings are held on Mondays at 1 p.m. in Room 204. Getting old and grey are: E. Belli Bivar, W. Burrows, A. Cohen, M. Concister, P. Dauphinée, P. Eliadis, S. Fisher, I. Fraser, R. Goosen, R. Janda, J. Latour, S. Lévesque, V. Marleau, B. Mitchell, D. Sokolyk, S. Stephenson, J. Vance, G. Witte, and D. Xistris.



Cruising

Cont'd from p. 3

basic anti-nuke contention to Professor Scott: do not the cruise missiles, like all nuclear weapons, constitute a departure from the past too radical to admit the automatic application of our inherited rules and concepts? No, was the reply; nuclear innovation is not so different in quality from the invention of gunpowder. In any event the courts are not competent to make the basic constitutional changes necessary.

The final questioner said he still could not see the link between testing and nuclear war. Establishing that link is exactly what we hope to do when we argue the case on the merits, said Greenspon; right now the issue is whether the government has to answer in court for the risks it undertakes on behalf of all of us.

The debate, which played to a full house, was sponsored by the McGill Law Group on Nuclear Disarmament.

LETTERS

M.A.S.H. 3644

Dear Mom,

I have just a few minutes free to jot down some thoughts to you. The first thing I should tell you is that I am alive and well as well as one can be, stationed at a front-line unit.

The war never seems far away, although yesterday we did get a taste of home for just a while. A group of women volunteers from Stateside calling themselves "Women's Lightweights" had a bake session down near the mess hall. It was great to taste some home-cooking once again -- G.I. rations of tuna, soup and coffee every day kill a man's appetite.

Life round here is really very boring; there ain't much fun doin' here. One of my buddies, Gary, got picked by the guys to be our Tax I Unit "Class" Rep. He got to see how the officers live and eat. Boy the stories he told us about the officers' club (they call it the "Faculty Club" for some strange reason -- I guess they figure they are fooling us enlisted men!). Anyway, Gary told us about all the boozin' and eating going on it that place -- they drink wine from a glass whilst we are forced to drink milk (!) from a carton!

Talking about weird names, I can't figure out how they come up with the names for our sports teams. First of all the C.O. makes us play sports -- tells us it's good for us, gets our minds off where we are, builds up unit loyalty, then we are given names like "Convivial Libation" and "Frankelmoin". How can you get excited over teams with names like that? Whatever happened to names like the "Blue Team" or the "Red Team"? Boy, last week, the C.O. (we nicknamed him

"Dean") made a real booboo -- copies of our latest handbook were handed out -- you know, how to maintain and improve your locker's efficiency (and stuff like that). The handbook is called the McGill Law Journal (another weird name). Anyway, the C.O. let this article by a guy called Philip Gerard slip in. You'll realize how excited the guys got when I tell you the title: "Concubines and Cohabitees: A Comparative Look at 'Living Together'" -- geez, you couldn't buy an extra copy. It was such a hot piece of property that they had to keep a list of people who already had one.

I don't want to get you worried, Mom, but recently I have been having these real bad nightmares when (or if) I fall asleep and I can't figure out what they mean. In my dream Sarge Baker keeps barking over and over again "Discreet versus Relational, Discreet versus Relational" and then every so often he says "Very good, carry on." I went to see the Sarge and asked him if he knew the meaning of what he was saying -- he couldn't figure it out either. I guess this place must be really getting to me.

Next week we have "special" target practice -- "special" because me and my partner Doug are the targets! In fact it's not as bad as it sounds -- all the 2nd year enlisted guys have to do it; 3 officers fire questions at us. The aim is to test our reflexes -- the whole thing lasts about two hours and then we are given a mark: they even make us wear our parade uniforms and insist we call the Officers "Lord" instead of "Sir"! Otherwise things are fine, life goes on, I feel kind of tired and have lost a little weight but so have most of the guys. Don't worry about me, Mom, cause I know you do.

Your loving son,
Walter

Cruise

Cont'd from p. 1

of the U.N. Secretariat, and consulting positions to both the Secretary-General of the United Nations and the Federal Government. The most important facet of Epstein's argument was the destabilizing effect of the Cruise missile on the global situation and potential arms reduction negotiations.

A weapon with considerable accuracy, the Cruise is considered especially dangerous since it cannot be detected by radar or satellite. It can be launched from the back of a pickup truck as easily as from a bomber or submarine. It is small and difficult to detect. As a result Epstein contends that there is a deep mistrust by the Soviets toward the use of a weapon that is unverifiable and that, in Soviet eyes, is a firststrike weapon. A firststrike weapon is one designed to wipe out enemy missile forces before there is an opportunity to retaliate. To qualify for that label a weapon must necessarily be fast. Although the slowpoke Cruise cannot qualify using that description, the important point is that the Soviets perceive the Cruise as a firststrike weapon.

Epstein also responded to the traditional criticism that unilateral disarmament is a naïve and idealistic response to a complex situation. The object of unilateral disarmament, argued Epstein, is not to disarm totally while the other side continues to develop and deploy arms. Rather, one side agrees to limited unilateral disarmament in the hope that the other side will follow suit within a limited period of time. Otherwise, the arms are redeployed. In other words, the objective of the strategy is reciprocal action.

Epstein also remarked that Canada's obligations to the N.A.T.O. alliance, are, at most, moral. There is no reason why Canada should be forced by her allies to test the Cruise. Obviously, much of the debate turns on the role of the Cruise in the European theatre. As a response to the purely political weapon deployed by the Soviets, the SS-20's, the Cruise can only serve to heighten political tensions, which could trigger a nuclear war. In addition, the Cruise that will be tested in Canada is an A.L.C.M. (airlaunched Cruise Missile), whereas the ones to be deployed in Europe are G.L.C.M.'s (groundlaunched Cruise missiles (pronounced "glick-ems"). These two are not, incidentally, to be confused with S.L.C.M.'s ("slick-ems") sea-launched Cruise missiles).

Mr. Robert Howse, from the Policy Development Secretariat of the Department of External Affairs, attempted to point out that the Cruise debate cannot be limited to the United States, Canada, or to descriptions of the Cruise missile's attributes. It must be seen in the context of global geopolitics. The only way to prevent nuclear war is to neutralize current political tensions. This, in turn, can only be achieved if Soviet objectives in using political weapons (i.e. SS-20's) fail as a result of Cruise deployment. The Soviets will then be forced to sit down at the negotiating table.

Howse disagreed with Epstein that the Cruise is viewed as a firststrike weapon by the Soviets. What the Soviets say in public about their policy is one thing, and what they actually think is another. The relatively slow speed of the Cruise (it flies slower than many conventional air-

craft) means that the flying time between West German bases and Moscow would be about two and one half hours. It would be impossible for the Soviets to be unaware of the approaching danger, and unable to launch their own missiles. It is extremely unlikely that the Soviets actually view the Cruise as a firststrike weapon.

Howse emphasized the potential role of Canada as a credible political force in the United Nations, rather than as a mediator between the Soviets and the Americans. Those two nations do not need mediators, he argued, but rather must negotiate in good faith face to face. Canada certainly has a role in bringing that about. Although Epstein agreed in principle, he felt that Canada could and should play a much more active role in the continuing worldwide attempts to control arms proliferation and implement disarmament treaties.

Your Weekly Smile

☛ Mafia justice is always in concreto.

Legal Ethics

Phi Delta Phi is proud to present the Honourable Mr. Justice Fred Kaufman of the Quebec Court of Appeal on Tuesday, November 1, at 1 o'clock in the Moot Court. Until his appointment in 1973 Mr. Justice Kaufman was a leading criminal lawyer in Montreal and is an acknowledged expert in that field, as well as in the field of medical jurisprudence. The focus of the discussion will be legal ethics.

Phi Delta Phi

Phi Delta Phi will be offering wine and cheese on Thursday, October 29 between 4 and 6 in the Common Room. All welcome!

H. P. for Dean

by Demetrios Xistris

Last week I had the distinct pleasure of meeting with H.P. to discuss his run for the Deanship. I must admit that he was quite forthcoming with his views on McGill. There is no doubt that the Dean Selection Committee must reckon with H.P. as a serious candidate.

H.P., who makes up in ego what he lacks in height, was quite serious during the interview since he realizes the tremendous sway the Quid holds in the institution. H.P. made it clear that he thought a McGill education should emphasize more of the practical nature of the legal profession and place greater importance on law as a mode and vehicle for social change and innovation. To accomplish this, H.P. feels that we must evaluate our teaching staff. To do so he advocates a Thuroonian approach: Zero-Base Hiring whereby all faculty members will have to go through a rigorous and thorough re-hiring process. "No more resting on your laurels around here, buddyboy. Either you kick ass or your ass gets kicked," quipped H.P. as he appeared to get all wrapped up in his platonic form. "The time has come," continued H.P., "to re-evaluate the professoriat that exists here."

H.P. also feels that he has some very innovative suggestions for McGill. One is to revert to the French system where professors are paid on a class by class basis by the students and then, only when class is over. "This way, if the student thinks that the prof wasn't worth his or her money then no dice. It's not a c.o.d. method but rather a pay for merit sys-

tem. Now you'll really get good lectures!" But even this might not be necessary if one were to adopt H.P.'s drastic approach to courses. "The way I see it, and I've studied this phenomenon from all perspectives, is that the students actually synthesize the material much better than the profs do. I mean these things called summaries. They're actually very good. I've noticed that somebody named Shields publishes them. Tell me, are they something like Coles Notes?"

"No," I responded.

"Regardless, I think that we should get rid of classes and casebooks altogether and just sell summaries for the students to study from. The money saved from professorial wages can then be handed over to the law library to promote computerized research and maybe even build up the best summary collection in Canada. I think it's a very real possibility. Something of the future, you know, eh?"

"But what about some concrete proposals to save the law school from financial failure?"

"Listen, I don't rule out a bailout from the government. I mean it's a quite likely scenario that we must contend with. On the other hand, I propose that we advertise the law school, pictures and all, in something like the Homes section of the "New York Times Magazine", and try to sell it to an Ivy League school that needs a reputable law faculty. I know Princeton may be interested. As a matter of fact I've had some contact with them on this and..."

H.P., ever adamant about rights of the person and

that he'll never let Quid take his photo, said that he would run an open administration. There would be no more use for the word Dean since H.P. would insist that students and faculty alike call him Henry. He would also eliminate the Associate Dean's position since he would seek to centralize power, and would also hire Dean Brierley as his left-hand man to serve as Faculty-University liaison.

"I really think John can help us a lot in that area. God knows that we have to be even-keeled with the Administration."

H.P. didn't seem to mind the extensive press that he has been receiving in the U.S. "I can understand how a man of my stature commands so much attention. On the other hand, I don't want my comments to drive the Russians away from the negotiating table in Geneva." H.P. admits to having hawkish tendencies but this is not meant to scare Rick Goldman and the fringe element at McGill. "Quite the opposite," replied H.P., "I want them to feel that they have a place and forum to discuss these issues with me. I'm not authoritarian. But my opinion is always final."

So it is.

H.P. will not be at the Dean's Hotseat on Wednesday but he says that you can catch him between Advanced Constitutional and Jurisprudence II. Next week his campaign buttons will appear with the catchy slogan: "Henri Pallard for Dean".

Editor's Note: Any resemblance with persons living or dead, fictitious or real, big or small, tall or short, is purely coincidental.

Censorwatch

The introductory general meeting of Censorwatch was held last week at the Law Faculty. Alex Fodor of the Russian Literature Department, a one-time president of International PEN in Canada, (PEN is an international association of writers) spoke to a group of more than twenty people about censorship of literature in the Soviet Union. Professor Fodor has a special interest in censorship, and has just published a book in the States about the manner in which Leo Tolstoy is interpreted in present

day Russia as a rampant socialist who maintained that the working class will save the world. In truth, Tolstoy himself explicitly argued the unworkability of socialism and warned against it. In art as in war, history rewrites itself in Russia.

Professor Fodor explained the workings of the Soviet censorship board "Glavit", whose book of rules disallows any mention of such things as earthquakes or other natural disasters, fires, mental illness or

physical disability, price increases, or the names of those fallen into disfavour. Shortages of food are to be referred to only as "regional bottlenecks" in food transportation.

Self-censorship was a topic of discussion, as was what happens to censored works. Professor Fodor recounted a visit he made to a top Soviet official's home, where one wall was lined with censored books. The official acknowledged that if he had been anyone else he would have been locked up in prison for possessing such a collection. When he was asked about researchers' access to classified information, Professor Fodor described the reactions of three Russian academics when he gave them a tour of the McGill Library.

"They asked me where the reserved section was, the one you need a special permit for, and I told them we didn't have one. They didn't believe me. They nudged each other and said, 'He's not allowed to tell us where it is.'"

Professor Fodor's talk was followed by a screening of "Acid Rain a Requiem or Recovery", a Canadian film labelled "political propaganda" in the States last February. No one in the audience could see anything politically biased in the film. It seemed quite evident that it was the subject itself which was objectionable to the State Department.

Sandra Stephenson

Moign Me

Big time college basketball. Pressure. Thrills. Heartbreak. Heroes. Winners. Losers. It was all there Monday night as McGill's team, the Fighting Frankelmoign, broke training camp before an enthusiastic throng and posted a dramatic comeback from behind, heart-stopping, in your face, alley-oop 39-31 victory over the Yids.

Led by Paul Dunn, a Robert Redford look-alike and former locker room attendant for a woman's roller derby team, the Moigns once again had to overcome internal dissension. Upset by the contract G.M. Red Averbach offered rookie sensation Arthur "Airborne" Evrensal, Brian "Psycho" Ward has vowed not to talk to the press. However, via sign language, this reporter (a recent Pulitzer prize winner as if you didn't know) was able to learn that Ward is threatening to tell what is really wrong with Wee Ricky Elliott.

The Moigns utilized their new flip-flopping, modified press, and sagging zone trap defense as or else

they were drunker than they seemed. Hot-shooting rookie guard Graeme "Cracker" Fraser teamed with the bloodied yet unbowed veteran Steve Krieger to direct the simple yet aesthetically pleasing Moign offense. Krieger was unavailable for a postgame interview as he was hooked up to a respirator and was receiving glucose intravenously.

In related developments, noted designer Bill Blass unveiled his new line of "Moigner Wear". Featuring a tiny monk doing a double pump slam, this new line of fashionable yet tasteful leisure wear will be available shortly at a fine hardware store near you. As well, Paramount Pictures will be releasing next Christmas the Moigners' first feature film, to be called "No Blood as No Foul".

Finally, the Moigners gained their first real groupies. Thanks Sandra and Francie for immeasurable moral support.

Wayne Burrows

THE EVENT of the YEAR

Forum National Conference

Pornography and Censorship

Pornography and Censorship: Pre- and post-Charter

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Faculty of Law, McGill University

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Moot Court Room

For further information:

Dan Bilak: 286-0816 or

Law Students' Association Office: 392-5121

Sponsored by the Dean, Faculty of Law and Law Students' Association

Everyone welcome

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All others: \$2:00